IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 2799 of 2007()

AGAINST THE ORDER DATED 23/12/2006 IN 6478/06 IN CMP.2576/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

.....

PETITIONER: APPLICANT:

SUMESH, S/O. RAJASEKARA ABU,
SANDHYA BHAVAN, MUNDAKKAL VILLAGE, KIZHAKKECHERRY,
ERAVIPURAM P.O., KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: COMPLAINANT:

---

1. MOSSES, S/O. DASAN,
PRIYAN LAND, PALLITHOTTAM, KOLLAM.

2. NELSON, S/O. MICHAEL,
ST. XAVIER NAGAR VEEDU, THAMARAKULAM WARD, KOLLAM.

3. STATE OF KERALA,
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,
KOLLAM EAST POLICE STATION, KOLLAM DISTRICT
THROUGH THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

R3 BY PUBLIC PROSECUTOR SRI. KAMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 2799 of 2007

- -

Dated this the 6th day of September, 2007

O R D E R

The petitioner is aggrieved by an order passed under Section 451 Cr.P.C. by the learned Magistrate.

2. To put it in a nut shell, the crime was registered on the complaint of the registered owner of the vehicle, who alleged that an autorikshaw belonging to him had been thieved. The registered owner had entered into an agreement with the petitioner herein, the financier, to avail a loan on the security of the vehicle. The police registered the crime and conducted the investigation. The vehicle was produced from the possession of the first respondent herein. I shall refer to him as the agreement owner. The agreement owner contended that he was in possession of the vehicle not by any illegal means, but on the strength of Ext.P3 agreement. He staked a claim for release of the vehicle to him pending investigation and trial. The petitioner herein also staked a claim for interim custody of the vehicle in the course of the investigation/trial. Significantly, the registered owner did not stake any claim for release of the vehicle under Section 451 Cr.P.C.

3. The learned Magistrate considered the application under Section 451 Cr.P.C. filed by the agreement owner and the financier together. The agreement owner was examined as PW1 and Exts.P1 to P6 were marked on his side. The registered owner was examined as RW1 and a witness was examined as RW2. Exts.D1 to D3 were also marked.

4. The learned Magistrate, by the impugned common order, came to the conclusion that the agreement owner is the person most entitled to possession of the vehicle. It is obvious that the learned Magistrate accepted the contention of the agreement owner that he had come into legal possession of the vehicle from the registered owner under Ext.P3. Significantly, the registered owner has not challenged the impugned order also.

5. The petitioner/financier contends that the petitioner is the person most entitled to possession of the vehicle and in these circumstances the learned Magistrate should not have ignored his claim and should not have preferred to release the vehicle to the agreement owner.

6. I find no merit in the challenge raised in this petition under Section 482 Cr.P.C. The petitioner is only the financier, who has advanced amounts to the registered owner for purchase of the vehicle. If there be

default in payment of the instalments, the petitioner can certainly approach the civil court to enforce his rights in respect of the vehicle. In whose soever possession the vehicle may be, the rights of the petitioner to proceed against the security offered to him by the registered owner will certainly remain. The petitioner has not admittedly effected any seizure of the vehicle. The petitioner is not, in these circumstances, entitled to possession of the vehicle under Section 451 Cr.P.C. I am of the opinion that the learned Magistrate committed no error warranting interference by invocation of the jurisdiction under Section 482 Cr.P.C. in directing release of the vehicle to the agreement owner, from whose possession the vehicle was found to have been seized by the police.

7. This Crl.M.C. is, in these circumstances, dismissed. I may reiterate that the rights of the petitioner to proceed against the security in accordance with law by initiating appropriate proceedings before the civil court in enforcement of his right against the security offered to him shall remain unfettered by this order.

(R. BASANT)
Judge

tm